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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,122	02/04/2004	David S. Majkrzak	C136.12-0016	4277
27367 7590 01/09/2008 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			EXAMINER TORRES, ALICIA M	
			ART UNIT 3671	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/772,122

**Applicant(s)**

MAJKRZAK, DAVID S.

**Examiner**

Alicia M. Torres

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,5 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 requires that each cutting line be concave with respect to a straight line between the first and second ends of the respective cutting line being about 14% of the length of the straight line. However, this structural limitation, specifically this ratio of 14%, was not included in the original set of claims, instead it was added in the amendment filed 6 February 2006. Additionally, the ratio was not included in the originally filed Specification and was instead added in the amendment of 6 February 2006. Therefore, the ratio constitutes New Matter. As to the drawings, the examiner refers the applicant to case law *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Specifically, the case concluded that it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. In this instant case, the applicant was silent on the issue of dimensions of the drawings and therefore any arguments based on measurement of the drawing

features are of little value. See MPEP 2125 Drawings as Prior Art, Proportions of Features in a Drawing are not Evidence of Actual Proportions When Drawings are not to Scale.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

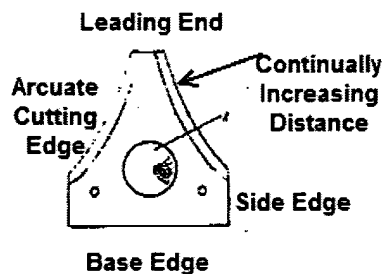
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poget FR 2595190 A1 in view of Isbell 4,380,889.

Poget discloses a knife section comprising:

- A flat top and bottom surface
- A base edge
- A leading end opposite the base edge
- A left side including
  - An edge extending from the base edge to about one half of a distance between the base edge and leading end
  - An arcuate left cutting edge extending between the left side edge and the leading end
- A right side including

- An edge extending from the base edge to about one half of a distance between the base edge and leading end
- An arcuate right cutting edge extending between the left side edge and the leading end
- Wherein a distance between the left cutting edge and the right cutting edge continually increases from the leading end to the left and right side edges
- Wherein the arcuate cutting edges define portions of a substantially elliptical cutting edge when a left side edge of one knife section is positioned substantially adjacent to a right side edge of another knife section.



However, Poget fails to disclose serrated cutting edges.

Isbell discloses a similar knife section wherein the cutter blades are sharp and serrated to produce a highly effective scissors or shearing action (see column 1, lines 54-56).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the serrations as taught by Isbell on the knife sections of Poget in order to produce an efficient scissor action.

***Response to Arguments***

5. Regarding the applicant's argument against the 35 USC 112, first paragraph rejection of claims 1, 2, 4 and 5, it appears the applicant has reinterpreted the case law and the MPEP in order to argue the rejection. However, the MPEP is clear that if a disclosure gives no indication that the drawings were drawn to scale then the patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes of the invention. This is clearly stated in the rejection of claims 1, 2, 4 and 5 in the Office Action dated 6/29/07 and the rejection is maintained in this Office Action as seen above.

6. Regarding the applicant's argument to the rejection of claim 16, that Poget's arcuate cutting edges fail to define portions of a substantially elliptical cutting edge, the examiner would like to point out that the claim requires only a *substantially* elliptical cutting edge. It is not clear to the examiner how the elliptical cutting edge of the invention is substantially more of an ellipse than that created by Poget's cutting edges. Furthermore, it appears that both knife sections of the invention and of Poget and Isbell will produce similar results out in the field. Without any kind of unexpected results obtained by the minor difference in elliptical shape of the invention, it appears the two knife sections both qualify as *substantially* elliptical.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

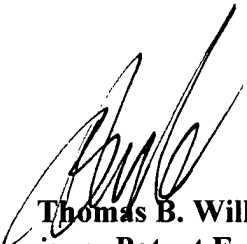
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 571-272-6997. The examiner can normally be reached Monday through Friday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 571-272-6998.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 571-272-3600. The fax number for this Group is 571-273-8300.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

AMT  
January 3, 2008